

MINUTES

PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING THURSDAY, DECEMBER 15, 2005, 10:00 A.M. CITY HALL 8TH FLOOR – COMMISSION CONFERENCE ROOM

Members Present:

Peter R. Partington, City Engineer
Bob Dunckel, Assistant City Attorney
Tony Irvine, City Surveyor
Kathy Connor, Parks Supervisor
Julie Leonard, Assistant Utilities Services Director
James Cromar, Planner III
Tom Terrell, Public Works Maintenance Manager

Staff Present:

Victor Volpi, Senior Real Estate Officer
Ed Udvardy, Manager of General Services
Judy Johnson, Administrative Assistant I
Adrienne Ehle, Bicycle and Pedestrian Coordinator
Rafeela Persaud, Word Processing Secretary
Eileen Furedi, Clerk II

Guests Present:

Rhonda Kramer
Bob Van Fleet
H. Ford Smith
Steve Henry
Joe Holland
Bob Moss
Scott Strawbridge
Jeff Falkanger

Peter Partington called the meeting at 10:15 A.M. and stated this is a Committee with the responsibility of advising the City Manager and City Commission on matters connected with City property and public right-of-way.

ITEM ONE: APPROVAL OF NOVEMBER 17, 2005 MINUTES

**MOTION BY BOB DUNCKEL TO APPROVE MINUTES. SECONDED BY TOM TERRELL.
MOTION PASSED UNANIMOUSLY.**

ITEM TWO: **VACATION OF RIGHT-OF-WAY**

Victor Volpi introduced item stating Stanley and Rhonda Kramer, along with their neighbor, would like a positive recommendation to vacate SW 8th Avenue to the dead end – 129 feet south of the south right-of-way of SW 14 Street. He stated there does not appear to be any City utilities in the street and it is not needed for any public purpose. He said he recently found out there is a development behind the hedges and the developers do not intend to have any through streets. He said the neighbors would like to make sure that this does not happen and privatize it. Victor Volpi introduced Rhonda Kramer.

Ms. Kramer said a developer purchased the property behind her (on 14th Court). Ms. Kramer stated she had been informed that the owner of the property was going to remove all the trees and grass in order to have access to the development. Ms. Kramer stated she would like to protect the green space and improve the landscaping. Ms. Kramer stated she has since found out who the developer is and was informed he has no intention of getting rid of the trees, but would like to continue the vacation process just in case he tries to pass the property off to someone else.

Julie Leonard asked the applicant to be more specific as to the location of the property in question. Ms. Kramer said it is in lots 7 and 8, and extend into the right-of-way about 30 feet. Bob Dunckel clarified the right-of-way front's 14th Court, and is not dependent upon 8th Avenue for access.

James Cromar said this item was before the DRC Committee and the ramifications were discussed. He said this was an odd situation and the possibilities for future development have been discussed, but the Planning Department will support the vacation.

MOTION BY BOB DUNCKEL TO APPROVE ITEM AS REQUESTED. SECONDED BY TONY IRVINE.

Discussion followed as to the vacation process and fees, City relinquishing its interest in the property, and the City getting an enhanced income from taxes due to applicant owning a larger parcel.

Tony Irvine said that Water Works 2011 should look at the vacation of the right-of-way. James Cromar asked if the applicant knew if any members from the Water Works 2011 were at the DRC meeting. Ms. Kramer said no. James Cromar said Water Works 2011 should be informed before going forward with the vacation. Kathy Connor stated the Homeowners Association did not have any problems with the vacation.

MOTION PASSED UNANIMOUSLY.

ITEM THREE: **DISCUSSION ABOUT SWALES**

Peter Partington introduced item stating that this is a discussion about swales. He introduced Joe Holland.

Mr. Holland stated that he is a licensed professional civil engineer, Homeowners Association (HOA) president, an activist in civic work for pedestrian/bike safety, and storm water run off pollution control in the Fort Lauderdale and Broward County areas. Mr. Holland said he would like to improve the enforcement of City codes.

Mr. Holland explained he had worked in Birch State Park, and had seen a presentation given by Karl Shallenberger pertaining to a swale program that had a pollution control component to it. Mr. Holland said about 15 homes in the neighborhood had signed up, particularly the ones draining into a freshwater lake. Mr. Holland said the asphalt was removed, grassy depressed swales were put in, and the general protection of the swales was deteriorating. Mr. Holland said the popularity of landscaping, mitigating parking issues, staff changes in engineering, and code enforcement group and policy decisions have altered how much the right-of-way would be protected from encroachment of aggressive landscaping and obstructions. Mr. Holland said advantages should be taken from hurricane disasters, the waterways should be protected from the run off pollution that comes from the swales, and swales are easements for public use. Mr. Holland discussed issues pertaining to the Harbor Beach Community that occurred approximately 1-2 years ago, an Obstruction Clause that referenced an article from the Sun Sentinel regarding the hedges being too close to the streets, and the issues on Ocean Lane and S. Ocean Drive.

Mr. Holland said consideration should be given to environmental aspects, pollution to the water bodies, the recent intense rainstorms, the workload of the Engineers in the Engineering Department, and code enforcement staffing. Mr. Holland said he is looking for the Committee's support.

Tony Irvine asked the applicant what he was proposing and why he wanted the Committee's support.

Mr. Holland stated policy and staff needs to be reevaluated, homeowners do not know the biology of the ground and are planting in the swales. Mr. Holland said it is up to City staff to execute codes and prevent interferences in the swales. Mr. Holland stated code enforcement should be able to handle the execution of codes and prevention of interferences and they have handled these in the past.

Peter Partington stated that code enforcement does not enforce in the right-of-way. Mr. Holland said he felt code enforcement could assist in the task.

Discussion followed as to enforcement of ordinances within the right-of-way, the swale as a drainage facility, the swale as a landscaping or obstruction area, and whether an engineering permit is required to landscape in the right-of-way, lack of permitting process when landscaping, budgeting perspective to review permits, water and sewer line concerns, disruption of service during a hurricane, width and dedication of right-of-way, the public having the right of passage, trees interfering with water service and drainage lines and what constitutes an obstruction.

Bob Dunckel said a dedicated right-of-way (50-60 feet) means the public has a right of passage throughout the entire 60 feet; that is what the law provides.

Bob Dunckel explained the issue before the Committee today has to do with questioning the administrators, and City Managers right to make policy decisions with respect to allocations of resources, **manpower** required to enforce ordinances, and the budget process and prior authorization. He said he feels this Committee does not have the power or authority to tell the City Manager how he should be allocating resources. He said the Committee's responsibility once these allocations are made is to manage the resources to the best of their ability, and within the priorities that are set higher above.

Discussion followed as to the City becoming more actively involved in swale issues, implementing a program that proactively looks at these issues, public complaints about swales that are not dealt with, and issues that have come before the PROW in the past pertaining to the same topic.

Tom Terrell said enforcement was not a function of the PROW Committee.

Joe Holland said he would like code enforcement to be left the way it used to be, there is a duplicity in staffing, there is a code enforcement group that works on private property and can also be tasked under the City engineering group to deal with these issues in the public right-of-way. Mr. Holland said he has a letter from Tim Welch to himself, pertaining to the removal of code enforcement under Lori Milano, extricating the group and leaving it to one individual's hands with one or two helpers.

MOTION BY BOB DUNCKEL STATING THE COMMITTEE AGREES WITH PRINCIPLES AND STYLES BY MR. HOLLAND, BUT THE COMMITTEE MUST DEFER TO THE POLICY MAKERS ABOVE AS TO THE BUDGETARY ALLOCATION OF RESOURCES, AND THE COMMITTEE WOULD LIKE TO SEE MORE RESOURCES DEDICATED TO THIS AREA, BUT UNDERSTANDS IT IS BEYOND OUR PROVINCE. SECONDED BY TOM TERRELL.

James Cromar asked to amend the motion in terms of allocation of resources. **MOTION AMENDED BY BOB DUNCKEL TO REPLACE THE WORD BUDGETARY WITH THE QUALIFICATION THAT ALLOCATION OF RESOURCES MEANS NOT ONLY DOLLARS IN THE BUDGET, BUT HOW PERSONNEL AND JOB FUNCTIONS ARE ALLOCATED.**

Discussion followed as to micro managing other departments.

Victor Volpi asked if the Committee needed to clarify the ordinances. Bob Dunckel said no.

Peter Partington said he could not support the motion as written, because he does not believe that the totality of the ordinances as written make sense to be enforced. He said he could only support the motion if it contains a reference to the current ordinances being revisited. Peter Partington stated he does not expect the width of the right-of-way to be cleared out of all obstructions and he could only support the motion if it included a reexamination of the current ordinances.

MOTION AMENDED BY PETER PARTINGTON TO RECOMMEND THE REVIEW OF THE CURRENT ORDINANCES. SECONDED BY TONY IRVINE.

Bob Dunckel voted against the amendment stating that it should be a separate subject matter.

Discussion followed as to the Committee agreeing with the applicant in concept, reexamination of ordinances, allowing the City Attorney, City Manager, and City Commission to conduct their own affairs, single family residential issues, parking/bicycle/pedestrian issues, how the swales could be used in different ways, and how the item brought to the Committee is far more complicated for a short discussion.

MOTION BY BOB DUNCKEL TO TABLE. SECONDED BY TOM TERRELL.

Yeas: Peter Partington, Julie Leonard, Bob Dunckel, James Cromar, Tom Terrell
Nays: Tony Irvine, Kathy Connor

MOTION PASSED.

ITEM FOUR: EASEMENT TO FPL

Victor Volpi introduced item stating that H.F. Smith with Florida Power & Light (FPL) would like a positive recommendation to replace a regular power pole with a 70-foot high, 42-inch diameter pole extending further onto City owned property. Victor Volpi said the property is located at 4250 NW 10th Avenue, in Oakland Park. Victor said all that is required is an overhead easement and FPL has agreed to trim (or remove) any nearby trees should this item be approved. Victor Volpi introduced H.F. Smith.

Tom Terrell said he had met with Jose DiCienzo and FPL at the site. He said it would get rid of a nuisance problem and there is a size/height issue. Tony Irvine asked if there was an easement. Tom Terrell said the original pole is located in the right-of-way and this request is for an easement. Peter Partington clarified that the pole would be moved from Oakland Park right-of-way to City owned property.

Bob Dunckel said he has concerns pertaining to the language in the FPL Easement (backup) as follows: 1) use the above-described right-of-way for all such other purposes except as herein granted and 2) provided, however, and by the execution and delivery hereof Grantor (City) so expressly agrees that no portion of the right-of-way shall be excavated, altered, obstructed, improved, surfaced or paved without the prior written permission of the Grantee (FPL). Mr. Smith said he would be willing to revise the language in the document. Bob Dunckel said he would work with the applicant on the wording.

James Cromar asked for clarification pertaining to the pole that will be replacing the existing power pole. Mr. Smith said it will be concrete, approximately 102 feet tall, and will take up one parking space. James Cromar asked if there had been discussions with the residents across the street. Mr. Smith said it has not come up, and FPL has successfully done easements in the past on every property on 10th Avenue, from 38th Street to Prospect Road.

MOTION BY BOB DUNCKEL TO RECOMMEND APPROVAL OF EASEMENT TO FPL, SUBJECT TO STRIKING THE TEXT THAT WAS REFERENCED EARLIER. SECONDED BY TONY IRVINE.

Discussion followed as to informing the surrounding residents, their viewpoint, and other businesses in the area.

Tom Terrell said he feels the City should not be asking policy questions of the City of Oakland Park, Unincorporated Broward County, or FPL. James Cromar stated there are cities that are on our boundaries and if something like this were going on in another community, he would hope that their planners would ask the same courtesy.

Peter Partington explained that this is part of the whole replacement of these poles, and it is a small part of the big project.

MOTION PASSED UNANIMOUSLY.

ITEM FIVE: **AGREEMENT TO ALLOW CART ON CITY CONTROLLED PROPERTY**

Victor Volpi introduced item stating that Riverwalk Trust would like a positive recommendation to allow an information, tickets, and map cart, that will be bolted to the ground, above the Kinney Tunnel, which is a DOT right-of-way leased to the City of Fort Lauderdale. Victor Volpi stated the booth would be manned by a person who will pass out free advertisements in the form of newspapers, magazines, flyers and maps, etc. Victor Volpi said the only things that will be sold are water taxi, water bus, and "Duck" taxi/tour tickets. Victor Volpi introduced Jeff Falkanger, Bob Van Fleet, and Scott Strawbridge.

Mr. Falkanger said it is going to be a vendor cart with wheels that would be anchored down, and would be left on the property overnight. Julie Leonard asked where would the cart be stored during a storm. Mr. Falkanger said it would be stored in the Riverside garage. Mr. Falkanger said the cart is part of a master plan at the Riverwalk, and various items would be sold there such as water bus tickets, magazines, bricks, and Riverwalk tee shirts. Julie Leonard expressed her concerns about other vendors wishing to place kiosks, as well.

Peter Partington asked the status of the land where the cart is proposed to be placed. Victor Volpi said the cart would be over the tunnel in the right-of-way, which the City is leasing from DOT. Bob Dunckel said the City leases DOT right-of-way; and the lease is for 20 years with an option to renew for a second 20 years. Peter Partington asked if this was allowable under the lease. Bob Dunckel said this would be based upon DOT approval.

Peter Partington questioned Julie Leonard's concerns about other vendor's wanting to place kiosks in the right-of-way.

Mr. Strawbridge, Chairperson of the Master Plan and Projects Committee, speaking on behalf of Riverwalk Fort Lauderdale Trust, explained that the idea came up around 1 ½ years ago, as part of a long-term vision to create more positive activity in the Riverwalk Park. Mr. Strawbridge stated that he believes the perception that the community is Riverwalk, the partnerships have built very strong foundation for our community, owners and operators of water bus and "Duck" said they would pay their staff with your brand to hand out information. Mr. Strawbridge said it would be a welcome center; they would be selling tee shirts and bricks, and would enhance the activity and tourism generation. Mr. Strawbridge explained that he toured the park around 3 weeks ago with the City Manager and the Director of Economic Development, and they discussed how other parks around the world used this type of function in cooperation with not for profit organizations. Peter Partington clarified that water bus is part of Broward County Transit, and is operated by water taxi, which is a for profit organization. Bob Dunckel explained that water taxi and the "Duck" are not part of the Transit System.

Discussion followed as to other vendor's wishing to sell tickets and/or items at Riverwalk, as well.

Victor Volpi asked the applicant's willingness to pass out free items for other shop owners on Riverwalk. Mr. Strawbridge said they anticipated working only with the Arts & Entertainment Partners and the cultural consortium. Mr. Strawbridge said the water taxi generates traffic and revenue. Mr. Strawbridge explained they would like to announce to the community what cultural amenities are available, and to establish a capacity to purchase tickets, and to create a revenue share for the ticket sales that would make the cart economically sustainable.

Bob Dunckel said that the City cannot sell or lease right-of-way.

Discussion followed as to the revocable license agreement held by the Cheesecake Factory, the distinction between for profit and not for profit organizations and the vendor being restricted to giving out literature for Riverwalk, and other not for profit businesses.

Bob Dunckel said the City cannot exercise control over the vendors and could be exposed to liability issues and first amendment issues could be questioned.

Discussion followed regarding terms of revocable license and various activities revocable licenses are use for.

Tony Irvine said the City has allowed any operator of a permanent business adjacent to Riverwalk to have certain access arrangements, and the precedent set is not as dangerous as having a mobile vendor in Riverwalk.

James Cromar said he works with code and based on Volume I, mobile vendors are allowed on private property in agreement with the property owners in certain zones. He said Cheesecake Factory and others can get revocable license for outdoor dining on public right-of-way, and mobile vendors are not allowed on public right-of-way anywhere in the City by code. He said there are other cities that have information type kiosk tied to selling tickets. He said they help create revenue to compensate workers located next to a right-of-way, but it is on private property. He said there are opportunities to be close to Riverwalk, on private property and meet zoning regulations.

Mr. Strawbridge asked in looking at long-term vision to have several carts at Riverwalk, would it be advisable to look for City owned property as opposed to right-of-way. Bob Dunckel said there would be fewer constraints, obstacles, and suggested the City could set it up, funded by the applicant. Mr. Strawbridge said he would like to discuss the issue further and would like to overcome objections of the Property and Right-of-Way Committee.

Bob Dunckel said he would discuss the proposal with his colleges, the attorneys' office, and get back with him at a later date.

MOTION BY TOM TERRELL TO DEFER. SECONDED BY TONY IRVINE.

MOTION PASSED UNANIMOUSLY.

Meeting adjourned at 11:45 a.m.